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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the International Bar Association, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The obligation to mobilise resources and human rights impact assessments of economic reform policies

Agenda Item 3: Interactive Debate with the United Nations Independent Expert on Foreign Debt

Mr President,

In support of the analysis and recommendations made by the Independent Expert on foreign debt in his report HRC/37/54, the International Bar Association's Human Rights Institute (IBAHRI) submits for your consideration the following findings and recommendations published in the IBAHRI report, *The Obligation to Mobilise Resources: Bridging Human Rights, Sustainable Development Goals, and Economic and Fiscal Policies* (December 2017).

1. The obligation to mobilise resources, related obligations and human rights impact assessment of resource-mobilisation options

Based on a wide compilation of the work of various treaty bodies and special procedures, the IBAHRI report develops the international legal framework supporting the state's obligation to assess the human rights impact of resource mobilisation policies. In addition to the non-retrogression obligation, the report highlights:

1.1 The obligation to mobilise resources for the realisation of human rights as a standalone obligation supporting evidence-based economic and fiscal policies

States have the obligation to ensure an adequate amount of resources are mobilised for human rights realisation in a way that is consistent with human rights principles. The process of setting priorities and managing trade-offs, as well as the substance of outcomes, must all comply with human rights-related transparency, participation and non-discrimination principles.[1]

Human rights monitoring bodies have advised states to undertake human rights impact assessments of resource mobilisation policies, including trade and investment agreements;[2] domestic tax policies and spill over effects of these on other countries; as well as the impact of austerity measures and other adjustment programmes.[3] Human rights impact assessments can: help identify the best choice among competing policy options for mobilising resources; identify both positive and negative human rights impacts of economic or fiscal measures; and help states prioritise those economic and social benefits that can make a sustainable contribution to the realisation of all human rights, over the short-term economic and/or political gains such measures can provide.[4]

The IBAHRI report found that human rights monitoring bodies do not generally address monetary policies and the way in which decisions adopted by central banks contribute to or hinder the availability of resources for the realisation of human rights. The lack of attention on monetary policies and central banks contrasts with the increasing public recognition that these policies affect the realisation of human rights, in particular economic, cultural and social rights.

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1 Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements.

2 In 2017, the CESCR made its views clear regarding trade and investment agreements and human rights impact assessments in a General Comment: CESCR General Comment 24, para 13.

3 See, eg, Concluding Observations United Kingdom E/C.12/GBR/CO/6 (2016) para 17; and Report of the Independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina (Mission to Greece) A/HRC/25/50/Add.1 (2014) para 92.

4 Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements, para 6.1.

1.2 The obligation to accord a degree of human rights priority to resource allocation in support of reprioritising spending on social sectors

The *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* – widely accepted by human rights monitoring bodies – note that: 'In the use of the available resources due priority shall be given to the rights-realisation recognised in the Covenant, mindful of the need to assure to everyone the satisfaction of subsistence requirements as well as the provision of essential services.' (para.28)

2. Giving priority to domestic over international resources in resource mobilisation

Through Sustainable Development Goal (SDG) 17.1, UN Member States committed to 'strengthen domestic resource mobilization, including through international support to developing countries to improve domestic capacity for tax and other revenue collection'.

Several human rights monitoring bodies have noted the advantages of mobilising domestic resources through taxation over external resource mobilisation.[5] 'The more a State can rely on domestic rather than external resource mobilization for its financing, the more it will be able to deploy sustainable development strategies and policies that are responsive to the needs of its people and accountable to them.'[6] Moreover, domestic resource mobilisation diminishes reliance on external aid, which has been considered 'unpredictable and unsustainable', 'inconsistent and insecure'.[7]

States should identify additional sources of fiscal space to increase resources for social and economic recovery. From an array of options, states should particularly consider widening the tax base, improving tax collection efficiency and reprioritising expenditures. 'Such reforms could help states achieve a more progressive, equitable and sustainable tax structure while complying with a human-rights framework'.[8]

3. The onus of a human rights impact assessment of economic reforms

In 2016, the CESCR issued a statement titled 'Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights'. This statement was triggered by the fact that the CESCR frequently faced situations where states parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) did not comply with their obligations owing to the adoption of fiscal consolidation programmes, 'including structural adjustment programmes and austerity programmes as a condition for obtaining loans' (para 1).

The statement notes that both lending and borrowing states seeking loans with certain conditionalities are required to carry out a human rights impact assessment prior to the loan's provision, to ensure such conditionalities do not disproportionately impact economic, social and cultural rights or lead to discrimination.

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5 See, eg, CESCR, Concluding Observations Kenya E/C.12/KEN/CO/2-5, para 18 and Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik (2010) UN Doc A/HRC/13/20/Add. 3.

6 Report of the Special Rapporteur on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona (2014) UN Doc A/HRC/26/28, para 52.

7 Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover (2012) UN Doc A/67/302.

8 Report of the Independent Expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, (on human rights-based approach to recovery) (2011) UN Doc A/HRC/17/34, para 80.

The statement also reiterates the obligation of international financial institutions, such as the International Monetary Fund (IMF) and the World Bank, and states as international organisation members to comply with human rights.

4. Assessing the impact of cumulative economic and fiscal measures

The IBAHRI report supports the cumulative impact assessment of economic and fiscal measures proposed by the Independent Expert. Based on the work of treaty bodies and special procedures, rather than simply assessing the potential human rights impact of specific resource mobilisation policies, states should consider whether these policies are the best options for countries seeking to mobilise maximum available resources for human rights.

5. IBAHRI's recommendations for the development of Guidelines on the human rights impact assessment of economic reforms

In application of the states' obligation to mobilise resources for the realisation of human rights, the obligation to accord a degree of human rights priority to resource allocation and the non-retrogression obligation, the IBAHRI recommends that the guidelines on the human rights impact assessment of economic reforms:

- address the state's obligation to identify the root causes of fiscal and economic crises, including the role of monetary policies, and ensure a participatory process for the development of evidence-based economic and fiscal policies;
- build on the broader state's obligation to assess the human rights impact of resource mobilisation policies;
- address the recommendation made to states to give priority to domestic over international resources in resource mobilisation, also in light of SDG 17.1;
- address the shared burden of lending and borrowing states in undertaking a human rights impact assessment; and
- address human rights impact assessments as an important accountability tool. By explicitly clarifying what can be expected from a particular resource mobilisation policy, errors, omissions and actors involved can be more clearly identified if the expected resources are not mobilised or when human rights are affected.